

Legislative Consent Memorandum

Animal Welfare (Livestock Exports) Bill

Background

1. This memorandum has been lodged by Mairi Gougeon, Cabinet Secretary for Rural Affairs, Land Reform and Islands, under Rule 9B.3.1(a) of the Parliament's standing orders, and is supported by Gillian Martin, Minister for Energy and Environment. The Animal Welfare (Livestock Exports) Bill was introduced by the UK Government in the House of Commons on 4 December 2023. The Bill can be found at <https://bills.parliament.uk/bills/3533>.

2. Legislative consent for similar provisions that formed part of the wider Animal Welfare (Kept Animals) Bill was granted by the Scottish Parliament in January 2022. <https://www.parliament.scot/-/media/files/legislation/bills/lcms/animal-welfare-kept-animals-bill/splcms061.pdf> However, the Animal Welfare (Kept Animals) Bill was formally withdrawn by the UK Government in June 2023. [Animal Welfare \(Kept Animals\) Bill - Parliamentary Bills - UK Parliament](#)

Content of the Animal Welfare (Livestock Exports) Bill

3. The Animal Welfare (Livestock Exports) Bill prohibits the export of certain livestock from Great Britain.

Provisions which require the consent of the Scottish Parliament

4. The Bill is a relevant Bill within Rule 9B.1.1 of the Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament and alters the executive competence of the Scottish Ministers. Clauses 1 to 5 and 7 of the Bill make provision applying to Scotland and which require the consent of the Scottish Parliament. Clause 6 does not apply to Scotland and does not require the consent of the Scottish Parliament. The relevant provisions are as follows:

Clause 1: prohibition of export of livestock for slaughter etc

5. Subsection (1) of this clause prohibits the export of relevant livestock from Great Britain for slaughter and subsection (2) makes it an offence to contravene this prohibition. Subsection (3) describes "exports" for the purpose of determining

whether a person has contravened the prohibition in subsection (1). Subsection (4) defines “relevant livestock” for the purpose of this clause as cattle and other bovine animals, horses and other equine animals, sheep, goats and pigs and wild boar. Subsection (5) defines export “for slaughter” as being when a person exports relevant livestock with the knowledge, or where the person could be reasonably be expected to know, that the livestock are being exported for the purpose of being slaughtered or being fattened for slaughter. Subsection (6) provides that, in Scotland, a person that commits an offence under clause 1 is liable on summary conviction to imprisonment for up to 6 months, to a fine not exceeding level 5 on the standard scale or both.

6. This clause is relevant because it is made for a purpose which is within the legislative competence of the Scottish Parliament, namely the prohibition of movement out of Scotland of animals for the purpose of protecting animal welfare.

Clause 2, 3 and 4: power to make regulations about enforcement of section 1 and related provision

7. Subsection (1) of clause 2 empowers the appropriate national authority (in Scotland this is the Scottish Ministers or the Secretary of State acting with the consent of the Scottish Ministers) to make regulations to provide for the enforcement of the prohibition on the export of live animals for slaughter. Subsections (2) and (3) provide non-exhaustive lists of what these regulations may cover, which include powers of entry, seizure or detention, the creation of criminal offences, and the imposition of monetary penalties or civil sanctions. Subsection (4) prevents regulations made under subsection (1) from conferring a power to enter a private dwelling without the consent of the occupier, or with the use of reasonable force, unless the power is only exercisable on the authority of a warrant (issued by a sheriff, summary sheriff or justice of the peace if in Scotland). Subsection (5) of clause 2 describes the civil sanctions that may be imposed under regulations relating to the enforcement of clause 1. Subsection (6) clarifies the scope of criminal offences that may be created in relation to regulations made under subsection (1).

8. Clause 3 (supplementary provision regarding section 2) defines “appropriate national authority”, “civil sanction” and “enactment” for the purposes of clause 2. In relation to Scotland, the “appropriate national authority” is the Scottish Ministers, or the Secretary of State acting with the consent of the Scottish Ministers. The power of the Secretary of State to act with the consent of the Scottish Ministers will allow consistent regulations to be brought into force simultaneously across Great Britain where policy objectives of the administrations are aligned and there are no good reasons for having separate Scottish subordinate legislation. In these cases the Scottish Ministers consider that the Protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU exit would apply.

9. Clause 4 (procedure for regulations) provides that any regulations made by Scottish Ministers under powers in this Act must be made subject to the affirmative procedure (or equivalent in the UK Parliament where made by the Secretary of

State) and may include consequential, incidental, transitional or saving provisions and may include different provisions for different purposes or areas.

10. Clause 2 is relevant because it is made for a purpose which is within the legislative competence of the Scottish Parliament, namely the prohibition of movement out of Scotland of animals for the purpose of protecting animal welfare. It is also a relevant clause because it alters the executive competence of the Scottish Ministers in that it confers a discretionary power on the Scottish Ministers to make regulations. Clauses 3 and 4, which make provision related to the power to make regulations in clause 2, are accordingly relevant for the same reasons.

Clause 5: connected repeals in relation to horses

11. This clause repeals sections 40 to 49 of the Animal Health Act 1981 (provision relating to the export of horses) and also makes other amendments to that Act that are consequential to their repeal.

12. This clause is relevant because it is made for a purpose which is within the legislative competence of the Scottish Parliament, namely the prohibition and regulation of movement out of Scotland of animals for the purpose of protecting animal welfare. It is also a relevant clause because it alters the executive competence of the Scottish Ministers in that it repeals provisions containing powers to make subordinate legislation that are available to the Scottish Ministers.

Clause 7: extent, commencement and short title

13. This clause makes general provision about consequential provision, commencement and extent.

14. This clause is relevant because it is made for a purpose which is within the legislative competence of the Scottish Parliament, namely the prohibition of movement out of Scotland of animals for the purpose of protecting animal welfare.

Reasons for seeking a legislative consent motion

15. The changes proposed in the Bill address matters of significant public concern for animal welfare which are within the legislative competence of the Scottish Parliament and require primary legislation to be given effect. These are areas where consistent changes to legislation in all GB administrations at the same time is logical. Given the freedom of movement of livestock within Great Britain, this will aid enforcement of import and export requirements by avoiding displacement of trade to circumvent controls in one country via points of entry or exit in another.

16. Allowing the UK Government to introduce legislation extending to Scotland will be the most efficient way to make these changes as it will avoid the need to develop separate primary legislation in Scotland and ensure that the changes can be introduced as soon as possible and allow them to be brought into force simultaneously throughout Great Britain.

17. Prohibiting and regulating the movement of animals out of Scotland for the purpose of protecting animal welfare is not a reserved matter. The Scottish Government recently committed to work with other administrations to seek to end the unnecessary long distance transport of animals for fattening or slaughter outside the UK.

Consultation

18. There have been extensive discussions and public consultations [Welfare of animals during transport - consultation: summary report - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/welfare-animals-transport-consultation-summary-report/pages/introduction.aspx) and [Live animal exports: improvements to animal welfare in transport - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/live-animal-exports-improvements-to-animal-welfare-in-transport) on the Farm Animal Welfare Committee (FAWC) recommendations on animal transport which included recommendations to reduce long distance transport. Further work to develop improved transport legislation following the consultations on the FAWC recommendations is expected to involve more detailed discussion with the relevant industry sectors and other GB administrations.

EU alignment

19. Angus Robertson, the Cabinet Secretary for Constitution, Europe and External Affairs had been consulted previously because the previous LCM proposals raised issues of alignment with EU law, however these current provisions in the Bill do not diverge from the requirements of EU Regulations as the proposed changes are consistent with the expected direction to be taken by the EU.

Financial implications

20. There will be minimal financial implications for Scottish Government in these proposals.

21. There were few exports of animals from Scotland to countries outside the UK for slaughter or fattening in 2020 and there have been none since 2020 so there will be minimal impact in practice if these exports are prohibited.

Conclusion

22. The Animal Welfare (Livestock Exports) Bill addresses areas of significant concern for animal welfare where consistent GB legislation is desirable to aid enforcement. Allowing the UK Government to introduce legislation extending to Scotland in this case will be the most efficient way to make these important changes as soon as possible and allow them to be brought into force simultaneously throughout Great Britain.

Draft Legislative Consent Motion

23. The draft motion, which will be lodged by the Cabinet Secretary for Rural Affairs, Land Reform and Islands, is:

“That the Parliament agrees that the relevant provisions of the Animal Welfare (Livestock Exports) Bill, introduced in the House of Commons on 4 December 2023, relating to animal welfare, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government
December 2023

This Legislative Consent Memorandum relates to the Animal Welfare (Livestock Exports) Bill (UK legislation) and was lodged with the Scottish Parliament on 18 December 2023

Animal Welfare (Livestock Exports) Bill – Legislative Consent Memorandum

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